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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,840

12/01/2006

Giacinto Zilioli

3687-179

3335

23117 7590 09/23/2008
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EXAMINER

CYGAN, MICHAEL T

ART UNIT

PAPER NUMBER

2855

MAIL DATE

DELIVERY MODE

09/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,840	Applicant(s) ZILIOLI, GIACINTO	
	Examiner Michael Cygan	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/05/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Safir (US 2001/0027949 A1). With respect to claim construction, note that the instruments claimed are “for chromatographic analysis”; these may be instruments usable in chromatographic analysis and are not required to be, e.g., separate chromatographs.

Safir discloses the claimed invention, an automatic sampler [200] associable with two instruments (mobile phase pump [116] and detector [216]) for chromatographic analysis of a plurality of containers [20] of samples, and interfaced via separate interfaces [360,364] with two computers [350,352] for data acquisition and processing for the control/management of the sampler, where the instruments are synchronized by a trigger pulse; see paras 0175-0176.

Claims 1-3 and 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by LaDine (US 2002/0068366 A1). LaDine discloses the claimed invention, an automatic sampler (STS) associable by multiple interfaces with the multiple computers with

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multiple chromatograph/MS devices (paras 102,104,126) for chromatographic analysis of a plurality of samples (para 116), where the computers and sample handling are synchronized by a central processor, including bar code scanner readings (paras 0119-0125), defining sampling and data acquisition sequences for each sample (paras 120-125).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Safir (US 2001/0027949 A1). Safir discloses the claimed invention except for the type of interface. However, the use of an RS-232, Ethernet, IR, or wireless interface for computers is notorious as being old in the art and would have been obvious to one having ordinary skill in the art at the time the invention was made.

As restated in *Astrazeneca AB v. Mylan Labs, Inc.*, 490 F. Supp.2d 381, 401 (SDNY 2007), the “person of ordinary skill in the art will ‘pursue the known options’ where there are a ‘finite number of identified, predictable solutions’ to a particular problem because a person of ordinary skill is ‘a person of ordinary creativity, not an automaton’.” (quoting *KSR Int’l*, 127 S. Ct. at 1742).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaDine (US 2002/0068366 A1). LaDine discloses the claimed invention except for the type of interface. However, the use of an RS-232, Ethernet, IR, or wireless interface for computers is notorious as being old in the art and would have been obvious to one having ordinary skill in the art at the time the invention was made.

As restated in *Astrazeneca AB v. Mylan Labs, Inc.*, 490 F. Supp.2d 381, 401 (SDNY 2007), the “person of ordinary skill in the art will ‘pursue the known options’ where there are a ‘finite number of identified, predictable solutions’ to a particular problem because a person of ordinary skill is ‘a person of ordinary creativity, not an automaton’.” (quoting *KSR Int’l*, 127 S. Ct. at 1742).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Cygan, Ph.D., J.D./
Primary Examiner, Art Unit 2855